

DOCKET FILE COPY ORIGINAL

ORIGINAL
RECEIVED

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

AUG 28 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the matter of)
) CC Docket No. 96-45
Federal-State Joint Board)
on Universal Service)

To: The Commission

REPLY OF THE IOWA TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION

The Iowa Telecommunications and Technology Commission, which operates the Iowa Communications Network (collectively, the "ICN"), by its attorneys, hereby submits this, its reply to oppositions to its petition for clarification and partial reconsideration of the Commission's *Report and Order* in the above-referenced proceeding.^{1/} As shown below, the limited opposition to ICN's petition misconstrues the nature of ICN's service and operations. Consequently, the Commission should grant ICN's petition in its entirety.

Discussion

As described in ICN's petition, ICN is a unique state-owned entity that provides telecommunications and related services to, among others, schools, libraries and rural health care institutions in Iowa. The State of Iowa subsidizes the purchase of certain of these services, including high speed service and Internet access, by eligible end user entities. Many of the ICN's users, including state and federal government agencies and telemedicine services, are not eligible for the State's subsidy programs. ICN's services are provided over

^{1/}Federal-State Joint Board on Universal Service, *Report and Order*, CC Dkt. No. 96-45, FCC No. 97-157, rel. May 8, 1997 (the "*Report and Order*").

a network that includes some elements purchased from other carriers and some elements owned and operated by ICN. For instance, ICN owns and operates, among other things, significant fiber capacity, switches and high speed data hubs across the State. Almost without exception, schools and libraries use services and facilities that are under ICN's direct control, including "last mile" facilities.

The principle opposition to the ICN petition comes from the United States Telephone Association ("USTA"). USTA argues that ICN is not a telecommunications carrier and that ICN should not be able to obtain full federal universal service support because the State of Iowa also supports eligible services.^{2/} USTA's opposition reflects a basic misunderstanding of ICN and Iowa's existing support program.^{3/}

First, ICN is a telecommunications carrier. ICN provides services to a wide variety of users, not just schools and libraries. While there are some restrictions on who can use

^{2/} See USTA Opposition at 6-7.

^{3/} GTE also makes a related argument, claiming that a "state network or educational service agency cannot resell . . . discounted services to schools and libraries at discounts and expect to receive universal service support for that transaction." GTE Service Corporation Opposition at 13-14. If by this statement GTE is suggesting that state networks are ineligible for universal service support for services provided to schools, libraries and rural health care institutions, this plainly is incorrect under the Commission's rules and the Communications Act. The use of another carrier's facilities to provide elements of an integrated service cannot render a carrier ineligible for universal service funding, especially when, as is the case with ICN, the carrier also has substantial facilities of its own. If, however, GTE merely is stating that universal service discounts cannot be made available both to an intermediate carrier and to the carrier serving the end user, that statement is correct. Indeed, ICN expects it will not be eligible to receive universal service discounts on the prices of services it obtains from other carriers for use in its network. Rather, ICN will receive universal service support only to the extent that it provides service to eligible entities.

ICN's services, ICN serves hundreds of locations that are not eligible for support under the Commission's program for schools, libraries and rural health care institutions.^{4/}

Moreover, USTA's cramped interpretation of the meaning of "telecommunications carrier" is contrary to the common understanding of the term. If the phrase "to the public" required a carrier to offer service that could be used by any customer, anywhere, many existing carriers would not be telecommunications carriers because they provide service to a limited range of customers. Some carriers serve only businesses, only residential customers or even only other carriers. Others, including most USTA members, serve customers in very limited geographic areas (typically much smaller than ICN's service area, which is the entire State of Iowa). USTA's interpretation of "telecommunications carrier" would deny that status to all of these companies. That is not what the term means and certainly not what Congress intended.

Second, USTA is incorrect to assert that ICN should not be eligible for federal universal service payments based on the actual cost of providing service to schools, libraries and rural health care providers. As a practical matter, USTA misunderstands the nature of the State's subsidies. The State does not provide a general subsidy to ICN. The State does not subsidize, for instance, ICN's services to federal or state agencies. Rather, the subsidies are targeted to specific users and are paid only when an eligible user purchases an eligible service. While the subsidies are paid directly to ICN by the Iowa Department of Education

^{4/} Ironically, some of the restrictions on the scope of ICN's service offerings are in place because they were insisted upon by USTA members during the legislative debates that led to the creation of the ICN.

rather than to the school or library, that is exactly the mechanism adopted by the Commission for its own program. Thus, Iowa's program directly parallels the Commission's program, and should be treated like any other program that targets aid to schools and libraries. In addition, because the State's subsidies are funded through general revenues, not through an assessment on telecommunications providers, USTA's suggestion that "all telecommunications carriers" might be required to "subsidize Iowa's state-wide telecommunications network" is simply wrong.

Finally, certain other parties argue against exemptions from payment of universal service fees.^{5/} These parties claim that it would be inequitable to exempt any party. As shown in ICN's petition, the public policy basis for requiring contributions from all commercial entities does not apply to entities such as ICN that are intended to provide specific public benefits. At best, requiring ICN to make contributions will be a wash, with no net costs or benefits. It is more likely, however, that requiring ICN to make contributions will create more costs than benefits, to the detriment of the public in Iowa and the public interest generally.


^{5/} See, e.g., Bell Atlantic Opposition at 8-9.

Conclusion

For all these reasons, the Iowa Communications Network respectfully requests that the Commission clarify and reconsider the *Report and Order* as described herein.

Respectfully submitted,

IOWA TELECOMMUNICATIONS AND
TECHNOLOGY COMMISSION

By: 
Kenneth D. Salomon
J.G. Harrington

Its Attorneys

Dow, Lohnes & Albertson, PLLC
1200 New Hampshire Avenue, N.W., Suite 800
Washington, D.C. 20036
(202) 776-2000

August 28, 1997

CERTIFICATE OF SERVICE

I, Tammi A. Foxwell, do hereby certify that on this 28th day of August, 1997, I caused copies of the foregoing "Reply" to be served via first-class mail, postage prepaid (except where indicated as via hand-delivery), to the following:

*The Honorable Reed E. Hundt, Chairman
Federal Communications Commission
1919 M Street, N.W., Room 814
Washington, D.C. 20554

Martha S. Hogerty, Esquire
Public Counsel for the State of Missouri
P.O. Box 7800
Jefferson City, MO 65102

*The Honorable Rachelle B. Chong
Commissioner
Federal Communications Commission
1919 M Street, N.W., Room 844
Washington, D.C. 20554

Paul E. Pederson, State Staff Chair
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102

The Honorable Julia Johnson
Commissioner
Florida Public Service Commission
2540 Shumard Oak Blvd.
Gerald Gunter Building
Tallahassee, FL 32399-0850

*Lisa Boehley
Federal Communications Commission
2100 M Street, N.W., Room 8605
Washington, D.C. 20554

The Honorable Kenneth McClure
Commissioner
Missouri Public Service Commission
301 W. High Street, Suite 530
Jefferson City, MO 65101

*Emily Hoffnar
Federal Communications Commission
2100 M Street, N.W., Room 8623
Washington, D.C. 20554

The Honorable David Baker
Commissioner
Georgia Public Service Commission
244 Washington Street, SW
Atlanta, GA 30334-5701

*John Nakahata
Federal Communications Commission
Office of the General Counsel
1919 M Street, N.W., Room 814
Washington, D.C. 20554


The Honorable Laska Schoenfelder
Commissioner
South Dakota Public Utilities Commission
State Capital, 500 E. Capitol Street
Pierre, SD 57501-5070

*Sheryl Todd (w/diskette)
Common Carrier Bureau
Federal Communications Commission
2100 M Street, N.W., Room 8611
Washington, D.C. 20554

Mary McDermott, Esq.
United States Telephone Association
1401 H Street, NW, Suite 600
Washington, DC 20554

Gail Polivy
GTE Service Corporation, *et al.*
1850 M Street, NW, Suite 1200
Washington, DC 20036

Lawrence W. Katz, Esq.
Bell Atlantic
1320 North Court House Road
Eighth Floor
Arlington, VA 22201


Tammi A. Foxwell

*Via Hand Delivery.